

# Exhibit 45

REBECCA E. BIRON  
ANDERSON vs TRUSTEES OF DARTMOUTH COLLEGE

February 27, 2020

1

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE  
CASE 1:19-CV-00109-JD

\*  
\*  
MARK ANDERSON \*  
\*  
vs. \*  
\*  
TRUSTEES OF DARTMOUTH COLLEGE \*  
\*  
\* \*

DEPOSITION OF REBECCA BIRON

Deposition taken at the Hanover Inn,  
2 East Wheelock Street, Hanover, New Hampshire,  
on Thursday, February 27, 2020, commencing at  
12:02 p.m.

Court Reporter:

Dawn L. Griffin-Smith, LCR  
New Hampshire LCR No. 108 (RSA 310-A:161-181)

REBECCA E. BIRON  
ANDERSON vs TRUSTEES OF DARTMOUTH COLLEGE

February 27, 2020

2

1 APPEARANCES  
2  
3

4 Representing the Plaintiff:  
5  
6

Mark Anderson - pro se (via telephone)  
9007 W. Shorewood Drive, #542  
Mercer Island, WA 98040  
jd2018265@gmail.com

7  
8 Representing the Defendants:  
9

10 DINSE  
11 209 Battery Street  
Burlington, VT 05402  
By: Kendall Hoechst, Esq.  
(802) 859-7026

12 ssmith@dinse.com  
and

13 WADLEIGH STARR & PETERS  
95 Market Street  
Manchester, NH 03101  
By: Chris McGown, Esq. (via telephone)  
(603) 669-4140

14  
15  
16  
17  
18 Also Present: Dana Scaduto  
19  
20  
21  
22  
23

REBECCA E. BIRON  
ANDERSON vs TRUSTEES OF DARTMOUTH COLLEGE

February 27, 2020

3

I N D E X

**WITNESS:**

REBECCA BIRON

## **EXAMINATION:**

Page

By Ms. Hoechst . . . . .

4

By Mr. Anderson . . . . .

23

**EXHIBITS FOR IDENTIFICATION:**

## Number

Page

\*\*\*None offered.



 **ESQUIRE**  
DEPOSITION SOLUTIONS

**800.211.DEPo (3376)**  
*EsquireSolutions.com*

REBECCA E. BIRON  
ANDERSON vs TRUSTEES OF DARTMOUTH COLLEGE

February 27, 2020

5

1 Q. When did you first start working at Dartmouth?

2 A. 2006.

3 Q. What is your current title?

4 A. My current title is professor of Spanish and  
5 comparative literature, and director of the local  
6 center for the humanities.

7 Q. How long have you been in that position?

8 A. Since July 2019. But I have been a professor since  
9 I have been here.

10 Q. Did you have a role before July 2019 that was  
11 different than your current position?

12 A. Yes, from 2015 to 2018 I was dean of the college.

13 Q. And what are the responsibilities generally  
14 speaking of the dean of the college?

15 A. The dean of the college is senior officer  
16 responsible for undergraduate academic experience.

17 The dean of the college also oversees the entire  
18 division of student affairs.

19 Q. What does supervision of student affairs entail?

20 A. There are six divisional areas in student affairs.  
21 So academic, advising and support, health services,  
22 community stands -- which is where judicial affairs  
23 is located -- student life, residential education

REBECCA E. BIRON  
ANDERSON vs TRUSTEES OF DARTMOUTH COLLEGE

February 27, 2020

8

1                   MR. ANDERSON: I can hear you now, but in  
2                   that last response it was kind of a little.

3                   MS. HOECHST: Okay. I'm going to ask the  
4                   court reporter to read back the answer and we'll  
5                   move on from there okay?

6                   MR. ANDERSON: Okay. Thank you.

7                   (Record read.)

8 Q. After, so in a typical appeal, after you received  
9                   the packet of materials and the USB drive  
10                  containing the audio recording of the hearing, what  
11                  would happen next?

12 A. I would read the appeal letter, then I would read  
13                  the entire content of the notebook from judicial  
14                  affairs, and I would listen to the audio recording.  
15                  And then I would determine whether there were  
16                  procedural errors or new information.

17 Q. Is the scope of your review limited to those two  
18                  categories you testified about, procedural errors  
19                  and new information?

20 A. Yes.

21 Q. What are the options you have as the review officer  
22                  after you make your determination or what  
23                  determination could you make, what are the options

REBECCA E. BIRON  
ANDERSON vs TRUSTEES OF DARTMOUTH COLLEGE

February 27, 2020

9

1 you have?

2 A. So if there, if I found that there were procedural  
3 errors that had materially affected the outcome of  
4 the committee on standards findings, I could,  
5 depending on what those were, I could overturn the  
6 conclusion of the committee on standards, I could  
7 adjust the conclusions. In terms of sanctions, I  
8 could overturn the sanctions or change the  
9 sanctions or adjust the sanctions or ask for a  
10 reworking of some part of the process.

11 Q. And could that reworking include ordering a new  
12 hearing take place?

13 A. Yes.

14 Q. How did you decide which of those potential options  
15 in general might be appropriate in any given case?  
16 Was there a particular process or procedure you  
17 followed?

18 A. There's no formal model because every case is so  
19 different, so that decision would always be made  
20 based on the particular appeal and the particular  
21 information about procedural errors or new  
22 information.

23 Q. Is there any, after you in a general case in your

REBECCA E. BIRON  
ANDERSON vs TRUSTEES OF DARTMOUTH COLLEGE

February 27, 2020

14

1 Q. What did you decide?

2 A. I decided that there were no procedural errors and  
3 there was no new information. So this was an  
4 unusual appeal because in Mr. Anderson's appeal  
5 letter he raised the issue that the dates listed in  
6 the allegation letter to him were limited to his  
7 violation of the restraining order, and the hearing  
8 and all of the case information was considering all  
9 of the events from the February problematic  
10 communication through that moment of the violation  
11 of the restraining order.

12 And his argument was that the dates on  
13 the allegation letter did not correspond to the  
14 dates of all of the events considered by the  
15 hearing. And his letter asserted that had the date  
16 on the allegation letter included from February  
17 through, I don't remember the last date, May, he  
18 would have responded differently on the allegation  
19 response form and in the hearing.

20 Given that he was claiming that he would  
21 have responded differently, I found that the issue  
22 of his ability to respond to the allegations does  
23 potentially have material affect on the outcome of

REBECCA E. BIRON  
ANDERSON vs TRUSTEES OF DARTMOUTH COLLEGE

February 27, 2020

15

1                   the hearing; and therefore, a hearing in which the  
2                   allegation letter would more clearly state that the  
3                   hearing was going to cover events from the first  
4                   communications all the way through would allow him  
5                   to respond in a more wholesome way as he indicated  
6                   in the appeal letter he would like to.

7 Q. Did you consult with anyone else before you made  
8                   your decision?

9 A. I did.

10 Q. Who?

11 A. Kevin O'Leary.

12 Q. Without getting into any of the specifics of what  
13                   you discussed with Attorney O'Leary, what did you  
14                   do after you consulted with him?

15 A. After I consulted with him I drafted the response  
16                   letter to Mr. Anderson's appeal request.

17 Q. I am showing you what has been previously marked  
18                   for identification purposes as Exhibit 13. Would  
19                   you please take a look at that document and let me  
20                   know when you've finished reviewing it.

21                   MR. ANDERSON: I'm sorry. When she's  
22                   looking at that, I don't have an index of what the  
23                   exhibits are, so could you maybe give me a brief

REBECCA E. BIRON  
ANDERSON vs TRUSTEES OF DARTMOUTH COLLEGE

February 27, 2020

21

1 A. No.

2 Q. Did you talk with Provost Kotz about any aspect of  
3 the first hearing or first appeal?

4 A. Not that I recall.

5 Q. Did you have any communication with Provost Kotz  
6 before he began his review as the hearing officer  
7 in the second appeal?

8 A. I remember a brief conversation about the role of  
9 appeals officers, stating with him -- because he  
10 had never served as an appeal officer -- stating  
11 that the role of the appeal officer was to  
12 determine if there was materially relevant  
13 procedural errors or new information.

14 Q. Other than the testimony you just gave about the  
15 parameters of the scope of his review were, did you  
16 give him any other details or information regarding  
17 Mr. Anderson's disciplinary case or any other  
18 topic?

19 A. No.

20 Q. Did you ever express to Provost Kotz in writing or  
21 in person or over the phone any view of yours as to  
22 what his decision should be in the second appeal?

23 A. No. I didn't have any information about the second

REBECCA E. BIRON  
ANDERSON vs TRUSTEES OF DARTMOUTH COLLEGE

February 27, 2020

22

1 case, the second hearing.

2 Q. Before you issued your outcome letter reflected in  
3 Exhibit 13, did you ever meet with Mr. Anderson in  
4 person?

5 A. No.

6 Q. Focusing on that same time period, did you ever  
7 speak to Mr. Anderson on the phone?

8 A. No.

9 Q. Now, focusing on the time period after you  
10 transmitted Exhibit 13 to Mr. Anderson, did you  
11 ever meet him in person?

12 A. No.

13 Q. Did you ever speak to him on the phone?

14 A. Not that I recall.

15 Q. Okay.

16 MS. HOECHST: Off the record for a  
17 second.

18 (Discussion held off the record.)

19 MS. HOECHST: Back on the record. So  
20 while we were off the record, Mr. Anderson asked me  
21 to locate a letter dated May 10, 2017, to him,  
22 which I believe is Exhibit 4, which I'm now going  
23 to hand to Ms. Biron.